1951 **File No.** O. watan/51

Legal Department

A **BRANCH**

K

Subject:—

P59F

opinions under the Bombay Hereditary Offices Act, 1874.

File No. O. watan/51

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14/12

Office of the R.L.A.

Kulkarni Watan, Betdur, taluka Kundgol, Dist. Dharwar. Claim by Shrimati Bhimabai Venkatrao Desai.

This is in connection with the appeal preferred by Shrimati Bhimabai Venkatrao Desai against the order of the Dewan and Collector of Jamkhandi dated 2-12-1944 directing that part of the watan lands of the Kulkarni watan of Betdur in Kundgol taluka standing in her name should be restored to Shri Govind Bhimrao Kulkarni, the appenent. The appeal was pending before the Raja of Jamkhandi till the merger and can now be disposed of by Government. The facts of the case would be made clear by reference to the following geneelogical tree :-

Ramchandra (Original holder)

Krishnaji	Narsinh
Bhimaji (died without issue on 24-4-1908	Ramchandra
Laxmibai (widow)	Sitabai (widow)
Govindrao (adopted on 20-5-1930 . appenent).	
Akkava (married)	Bhimabai (Appellant)

In 1876 Krishnaji, the elder of the two sons of Ramchandra, the original holder of the watan, bestowed half of the watan property and an eight annas right of service on Narsinh, his younger brother. Bhimaji, the last male descendant of Krishnaji's branch died without a male heir on 24-4-1908. His widow Laxmibai succeded to the watan and her name was entered as representative watandar. In the other branch, the last male descendant was Ramchandra who left behind two daughters. After his death of Sitabai on 18-11-16 her younger daughter, Bhimabai, (i.e. the present appellant) who was then unmarried was recognized as heir to the watan property as late as on 2-4-1929 on the ground that there was no male issue surviving in either branch of the watan family. On 20-5-1930, Laxmibai, the widow of Bhimaji,

adopted Govindrao (the opponent in the present appeal). The adopted Govindrao's claim to the share of the watan in Narsinh's branch on inter alia the grounds that the adoption created a male member in the watan family at the time of Sitabai's death in 1916 and that the watan could not go out of the family was upheld by the Dewan of Jamkhandi in his order dated 2-12-1944. The appeal preferred by Bhimabai Desai against that order will be found at pages 5-13 of File a. H.L.A. is requested to advise whether the view taken by the Dewan, Jamkhandi State is correct.

2. The question involved in the present case is about the succession to property vesting in a collateral. Bhimabai, the appellant, was recognized as heir to the watan property of which Ramchandra was the last male holder, in the year 1929. Govindrao was adopted subsequently in 1930 The question for consideration, therefore, is whether Govindrao's adoption in 1930 will have the effect of devesting Bhimabai who was recognized as heir to Ramchandra, a collateral, in the other branch of the family. In Bhubanaswari Debi v. Nilkamal Lahiri ((1885) L.R.12. I. 137), the Privy Council came to the conclusion that according to the law as laid down in the decided cases, an adoption after the death of a collateral does not entitle the adopted son to come in as heir of the collateral. This conclusion was re-affirmed and re-emphasized by the Board in Anant vs. Shankar (46 Bom. L.R. 1.). The ratio of that case has been put down by the Chief Justice of the Bombay High Court in Jivaji Anaji vs. Hanumant Ramchandra ((1950 Bom. 510 at p.521) as follows:-

"... when the last surviving coparcener dies and the widow of a deceased coparcener adopts a son, the property left by the sole surviving coparcener, whatever the nature of the property may be, becomes divested from the person who was the next heir of the last surviving coparcener and revests in the new member introduced in the family".

In the case, their Lordships were requested to extend the

above principle to decide the question whether an adoption after the death of a collateral would allow the adopted son to come in as heir of the collateral. Their Lordships declined to do so and observed as follows:-

"But so far as we are concerned, unless we are led to the conclusion that the decision of the Privy Council leaves us no option we do not think it right that we should come to a decision which would further disturb titles which have already become perfectd; and therefore we do not wish to extend the principle of Anant v. Shankar beyond its strict application to the facts as found by the Privy Council; the more so as the principle which we are accepting and adopting is a principle which the Privy Council itself has laid down and which has again been, as already pointed out, reaffirmed and re-emphasised in the case of Anant v. Shankar."

3. The appellant has also urged this ground amongst others (vide ground No.9 in her petition at p.9 of File A). Govindrao has rightly succeeded to the watan property in Krishnaji's family. But in the above circumstances his claim to the other half of the property at present standing in the name of Bhimabai does not appear to be sound. The Dewan's order dt. 2-12-1944 would not in the above view, appear to be correct.

Id/- (P.M.L.)

Remembrancer of Legal Affairs.

U.R. to R.D.No. 1253, dated the 19th January 1951.

R.D.P.
27/7/56

S.C.

L.D.R.I. No.2165 dt. 2-2-51.

Submitted.

In this case S.No.5 of Khedi Khurd, taluka Erandol, Dist. East Khandesh, which had been assigned for remuneration to the Mahar Officiaters of the village, had passed into the possession of the ancestors of Shri Manik Tetaram Patil, the present holder, before the coming into force of the Bombay Hereditary Offices Act,1874. In 1947 the Mahar watandars had approached Government requesting that the land may be restored to them. That request was rejected; however, the Collector was instructed to see if the rent payable to the Officiaters (which had been once revised in 1937 to Rs.85/-) could not be increased. An enquiry was accordingly held by the Distt. Dy.Collector, who by his order dated 19-11-1949 has directed that the rent should be fixed at Rs.175/-. The appeal preferred by Shri Manik Tetaram against this revised rent has been rejected by the Collector. The Distt. Dy. Collector's order does not, however, mention from what year the revised rent should be recovered. The Distt. Dy. Collector states that as the order has been made on 19-11-1949 it will have effect from the Revenue year 1949-50. The Collector states that there would be no objection to giving effect to the order from the year 1947. The R.L.A. is requested to advise whether the view expressed by the Collector is correct

Id/ 9-2-51

A. L. R.

R.D.P.
27/7/56

S.C.

Legal Department.

Seen and returned.

The view taken by the Under Secretary, Revenue Department, is correct.

Id/- (J.R.D.) 12/2

Additional Secretary to Government.

U.R. to R.D.No. 2779, dated the 13th February 1951.

R.D.P.
27/7/56

t.c.

1722
27-1-51.

Submitted.

Please see notes underlying H.L.A's opinion No. 13896 dated 3-10-1950. In accordance with this opinion the Collector was informed that the Inamdar cannot have any right to teak trees in the Reserve Forest areas in the inam villages and his right xto after-growth of teak in other areas of these villages should be recognised and as there is no partition of these villages the whole after growth of teak may be disposed of by the forest Deptt. andx 70 p.c. of the proceeds may be given to the Inamdar. The Collector requests that the villages of Talwade, Morkure, Pathave and Kikwari in Baglan taluka are Shakkati villages and that their revenue is shared between Govt. and the Inamdar in the ratio of 30 : 70 respectively. It is also stated that the Inamdar's claim over the teak trees in respect of these villages was admitted. It is proposed by R.D. to issue orders for the disposal of the teak trees in the villages by the Forest Deptt. and 70% ofxthe proceeds going to the Inamdar on the analogy of orders in para.2 of Govt. letter at p. 29 ante.

Id/- 5/4
A.L.R.

Id/- 5/4
Addl. Secy.

Id/- 7/4

R.D.P.
27/7/56

S.C.

Legal Department.

Been and returned.

Id/- (P.M.L.)

Additional Secretary to Government.

U.R. to R.D., No. 6867, dated the 12th April 1951.

R.D.P.
27/7/56

S.C.

No.24289 dt/9-12-50.

Submitted with reference to R.D. office note at p. 109 ante. This is in connection with the petition dt/ 24-12-49 (pp. 57-60 ante) made on behalf of Shri Shankaracharya of Karvir and Shankeshwar requesting Govt. that the order passed by them on 21-9-1943 rejecting his claim to a piece of Paragana Watan land at Ankali be revised. The facts leading to the reference are as follows:- S.No.62 of Ankali, Taluka Hukeri, is a Paragana Watan land originally attached to the Desgat watan of the Sardesai of Wantmuri. It appears that in 1757 the then granted the land in question as a gift to the Sankeshwar Math. In 1858 the then Shankaracharya in his turn gifted away the land to one Kende Dixit Aranke (the predecessor-in-title of the appenent in the present petition) as Dharmadaya.

In the year 1931 the Swami of the Math applied to the Collr. for restoration of the land on the ground that it had been unauthorisedly and illegally transferred to a non-watandar. The Asstt: Collr, Belgaum by his order dt/ 29th July 1932 (pp. 67-73 ante) declared the alienation to be null and void, but as the appenent (i.e. Aranke) had been in possession of the land since about 1858 he directed that possession of the land should not be disturbed, but that full rent (to be fixed) should be paid to the Swami on account of the profits of the Watan. The amount of the rent was fixed at Rs.240/- per year. Against that order an appeal was filled by one Gedubai who was the then holder, But the appeal was dismissed. The Asstt: Collr's. order dt/ 29th July 1932 declaring the alienation to be null and void was also upheld by the Commissioner (p.99 ante). In the meanwhile Gedubai died in 1938 and the present appenent approached Govt. in revision (pp.1-13-ante). The contention then raised by them was that the Swamis only acquired the property and not the office of the watan and was not therefore a

watandar within the meaning of the Bombay Hereditary Offices Act,1874. Relying upon the decision of the Bombay High Court in Tarabai Shrinivas Vs. Murtacharya Anantacharya (41 Bom. L.R. 924) which fully covered the point arising in the application (Vide R.L.A's O. No. 4250, dt/ 16-6-1943 at page 39 ante) the Govt. in exercise of the power conferred by Sec.79 of the Hereditary Offices Act set aside the Asstt: Collr's Order dt/ 29th July 1932 restoring the land to the Swami. It is against that order that the present petition has been made by the Swami. In support of this application he has relied upon a recent (Full Bench) decision of the Bombay High Court reported in 51 Bom. L.R.556 where the decision in 41 Bom L.R.924 above referred to has been overruled and also upon the decision of the High Court in S.A.No.1059 of 1944 (copy at pp. 61-65 ante) which arose out of suit No.90 of 1942 filed by the opponents in this very case. In reply to this contention of the petition the opponents have raised the following two arguments :-

1) That under Sec. 79 of the Bombay Hereditary Offices Act,1874, Govt. has no power to revise its own order; and

2) That the Swami's claim is barred by limitation

The Collector of Belgaum does not consider that there is any force in either of these contentions and is inclined to grant the request made by the Swami. The R.L.A. is requested to advise.

R.D.P.
27/7/56.

S.C.

Legal Department.

The only point that is raised for the R.L.A.'s consideration is: whether there is any limitation prescribed for action by the Collector under section 9 of the Bombay Hereditary Offices Act, 1874.

2. No time is prescribed within which an order of a Collector under section 9 must be made. The words used are "Whenever before the date of this Act coming into force". These are words of the widest signification and are inconsistent with any limitation of time. Therefore, no law of limitation applies to an action of the Collector under this section (see Shri Balkrishna v. the Secretary of State - printed Judgments, 1892, 324; Bai Shivganga v. the Secretary of State, 7 Bom.L.R.186). In the present case the Watandar seeks relief under section 9 of the Bombay Hereditary Offices Act. Consequently, the Fact that the alienation was made in the present case sometime in 1853 would create on bar of limitation to the Collector's action under section 9. The question of adverse possession would only arise if the Watandar seeks his remedy in a court of Law.

Id/- (P.M.L.)

Additional Secretary to Government.

U.R. to R.D.No. 7082, dated the 4th May 1951.

R.D.P.
27/7/56

S.C.

LEGAL DEPARTMENT.

R.I.No.1313 of 20-1-1951.

Submitted.

Please see G.R.R.D.No. 1300 dated the 6th February 1912, containing R.L.A.'s opinion No. 3149 dated ~~20kx~~ 20-12-1911 and R.D.Note at pp-77-84 ante. It appears that Gurusangappa alias Annasaheb Ramacomappa made an application contending that he is the Paragana Watandar of Girisagar villages and that the lands in question were alienated by his ancestor to the ancestors of the applicants and that both the alienor and the alienee being dead a certificate under sec-10 of the Bombay Hereditary Offices Act, 1874, may be issued to him. The Prant Officer, Bagalkot Division, after hearing the parties issued a certificate accordingly. The revision applications filed by the applicants against this order were rejected by the applicants against this order were rejected by the Collector of Bijapur and the Commissioner, S.D. The applicants have new approached Government under section 79 and R.D. is of the view that the P.O.'s order granting a certificate under section 10 is correct. R.D. states further that as the crux of the hole question is whether there was a fresh alienation as a result of the consent decree in 1913. The R.L.A. is requested to advise in the matter.

R.D.P.
27/7/56

S.C.

It is true that lands in dispute along with the other lands were mortgaged to the petitioners' ancestors in 1871 by Sheshava the adoptive mother of Bhimrao. It appears that under an arrangement between Sheshava and Bhimrao, the former was entitled to enjoy the Watan lands during her life time; and the latter was entitled to enjoy the Watan lands thereafter. It is, therefore, apparent that the mortgage executed by Sheshava in 1871 could not be binding on Bhimrao. These lands along with others were purchased by the petitioners' ancestors in execution of a decree obtained by one Tankasali against Bhimrao and the sale certificate thereof was issued to them some time in 1872. This auction sale could not vest in the petitioners' ancestors full title over these lands, for, Sheshava during her life time had the right to redeem. Sheshava died in 1909 whereafter Bhimrao started proceedings in the Revenue courts for restoration of the lands. He succeeded before the Assistant Collector and the Collector and while an appeal by the petitioner was pending before Government, it appears that, a Civil suit No.142 of 1910 was filed by the petitioner Mallangouda and the others disputing the right of Bhimrao to restoration of the lands on the ground that by virtue of the mortgage and the sale certificate issued to them they had become the owners of the lands. This suit was ultimately compromised and according to the terms of the compromise decree some lands were given to the petitioner Mallangouda and others as full owners; while the lands in dispute were given to them for enjoyment during the life time of Bhimrao and his son Ramasomappa. It is clear, therefore, that so far as these lands are concerned, neither the mortgage of 1871 nor the auction sale of 1872 proved to be a source of title or right to the petitioners for possession and enjoyment of these lands. It was by virtue of the consent decree in Civil Suit No. 142 of 1910 that they came to hold these lands. Consequent

Consequently, a fresh alienation took place under this decree and the orders passed by the Prant Officer under section 11 of the Bombay Hereditary offices Act and confirmed in appeal by the Collector, appear to be correct.

Id/- (J.R.D.) 18/6

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9686, dated the 20th June 1951.

R.D.P.
28/7/56.

S.C.

Legal Department.

Submitted with reference to R.D. note at pp.1-2 ante.

2. The facts are briefly stated below:

A piece of land S.No.140, measuring 1-37 and assessed at Re.1-0-0 of Sakur Dumala in Igatpuri Taluka standing in the name of (1) Sadu Bahiru (2) Dhondi Rana and (3) Krishna Bahiru, the Vahivatdars of Bahireba temple in that land, was requisitioned on 16-8-1942 for military purposes and since then annual rental of the endowment inam land was being paid to the Vahivatdar Sadu Bairu as other two Vahivatdars are dead and their heirs have no objection to the payment xx to Sadu Baniru. During the period of requisition, the structure of the temple was demolished by the military and consequently compensation of Rs.450/- has been sanctioned. The payment of the amount is held up because of a dispute between the Vahivatdars and the public i.e. the panchas of the village who it may be noted removed the deity on demolition of the xx structure and have installed it in a kachha temple erected by them by voluntary contributions in S.No.244/2 some six years back and are worshipping it. The Vahivatdar is claiming the amount on the plea of his right recorded in the R.R. and the Sanad. The R.D. relying on sec.65 of Joglekar's Alienation Manual Holds that the amount of compensation will have to be paid to the Vahivatdar irrespective of the fact whether the deity has since been removed from the place and worshipped by somebody else, that the claim of the panchas will have to be rejected and they may if they are so advised establish it in a Court of law. R.L.A. is requested to advise whether this view is correct.

R.D.P.
28/7/56

S.C.

Legal Department.

The view taken by the Revenue Department is correct. The compensation ~~x~~ may be paid to the Vahiwatdar of the temple on his executing an indemnity bond and the villagers, if they have any grievance, may go to Comnt.

Id/- (P.H.L.)

Additional Secretary to Government.

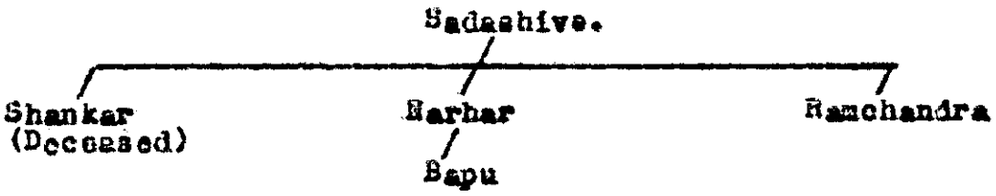
U.R. to R.D., No.10203, dated the 27th June 1951.

R.D.P.
28/7/56

S.C.

OFFICE OF THE R. L. A.

The question for consideration is who out of the two heirs, Bapu Harhar and Ramchandra Sadashiv, is the proper person in whose name the Kulkarni commutation Cash Allowance standing in the name of Shankar Sadashiv Kulkarni who died on 28th March 1950 should be entered. The relevant genealogical tree is as follows:-



While the Collector of Nasik considers Bapu Harhar to be the eldest male representative in the senior surviving branch, the District Government Pleader, Nasik, considers that the proper person is Ramchandra. The R.L.A. is requested to advise whether the view expressed by the Collector or the District Government Pleader is correct.

2. In this case the commutation had been settled by Shankar Sadashiv Kulkarni in the year 1935, under section 15 of the Bombay Hereditary Offices Act, 1874. "Under section 15 it is competent to the Collector to introduce a condition in the settlement deed laying down a particular line of devolution for the direct descendants of the perso who enjoyed the allowances first." (I.L.R. 53 BOM. 739). Condition 8 of the Commutation Settlement Sanad granted to Shankar Sadashiv Kulkarni accordingly provides that succession to the cash allowance shall be governed by the law o of the parties, i.e. the ordinary Hindu Law, with the resul that the provision of rule 26(3) of the Pensions Rules would be deemed to be overriden. The last grantee Shankar Sadashiv Kulkarni died without leaving any issue. Under the Mitakshara School of Succession his brother would have a preferential claim over his brother's son i.e Bapu Harhar. The proper person whose name should be enter ed in the Government records as the recipient of the allow ance is Ramchandra Sadashiv and not Bapu Harhar.

3. In this connection attention is invited to the provisions of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 (Bom.LX of 1950) under which all Kulkarni Watans in the State have been abolished and the Bombay Hereditary Offices Act, 1874, has ceased to apply to these watans. The last grantee of the commutation allowance in this case however died on 28th March 1950; and Shri Ramchandra Sadashiv Kulkarni will be deemed to be the holder of the allowance till 1st May 1951 (since which date the above Act has been brought into force) and shall be entitled to receive the compensation contemplated by section 6 of that Act.

Id/- (J.R.D.) 16/6

Remembrancer of Legal Affairs.

U.R. to R,D. No. 9595, dated the 18th June 1951.

R.D.P.
23/7/55

S.C.

Office of the R.L.A.

Section 64(1) of the Bombay Hereditary Offices Act, 1874 (Act IIIof 1874), provides for the Collector's power to register the names of individual Watandars as holders of the inferior Village Hereditary Office or to register it as held by the whole body of Watandars, and to determine when the individual names are so registered the rights, duties and responsibilities among themselves etc. Sub-section (2) provides that "The Collector, when he is satisfied that a person who produces a decree or order of a competent Court is entitled to have his name entered in the register as the such heir, provided that thesaid order or decree is produced within six years of thedate of the entry in the said register sought to be amended, shall amend the said entry in the said register accordingly." This provision clearly implies that the Collector is required to register the name of the nearest heir of a deceased Watandar under section 64(1). Section 36 which relates to the other representative Watandars, as it stood before it was substituted by the present section 36 by Act III of 1919, provides that "when any representative Watandar dies it shall be the duty of the Patel and village-accountant to report the fact to the Collector and the Collector shall, if satisfied of the truth of the report register the name of the eldest son or other person appearing to be the nearest heir of such Watandar, as representative in place of the Watandar so deceased. A certificate of heirship or a decree of a competent court shall until revoked or set aside be conclusive proof of the facts stated or determined in such certificate or decree." This provision was construed as a 'rule of primogeniture' for the purposes of succession to the office of the representative Watandar Patil or Kulkarni (see pp.140, 141 of Phadnis 's Watan Act). It would, therefore, follow that the rule of succession so far as the inferior village hereditary offices under Part X of the Bombay Hereditary Offices Act is concerned the position is as it stood under section 36 in respect of succession to the hereditary office of Patel

or Kulkarni. When the old section 36 was construed as prescribing a rule of primogeniture, section 64(1) will have to be similarly construed in respect of succession to the inferior village hereditary offices. This inference is also supported by the observations made by Phadnis at page 189 of his Watan Act (5th Edition). Consequently, in the present case, the ~~xxxx~~ sons of the deceased eldest son of Shri Dama N Jaba, the representative Watandar, to the Kharki Watan of Khasas Village in Pachora Taluka, will have to be given preference to the eldest living son of Shri Dama Jaba.

Id/- (J.R.D.) 30/7
Remembrancer of Legal Affairs.

U.R. to R.D. No. 12158, dated the 30th July, 1951.

R.D.P.
23/7/51
S.C.

L.D.R.I. No. 16113/51
3/8/51.

Submitted with ref. to R.D. note. The facts are briefly stated below.

S.No.90/7 of Mundhava measuring 3 A.- 12 G. and assessed at Rs.6-11-0 is a Patil Inam land of Class VI A. It is assigned for Patil service. It stood in the name of one Hanumanta Khandu Gaekwad. He sold it in 1920 to one Dhondiba Santaram Jamble who did not belong to Watan family. Dhondiba died in 1932 and his son Gulab was shown as heir in the Record of Rights. The Appellant Bhiku Kushba Gaekwad is a distant cousin of Hanumanta. He applied to the Collector that the land be resumed from Gulab Dhondiba and restored to him under sec.11 of the Watan Act. In the meanwhile Gulab transferred the land to his sister Rakhmabai the widow of one Shridhar Gaekwad, a member of the Patil Watan to which the applicant belongs. The Prant Officer by his order dated 20th October, 1948 held that the appellant was neither a R.W. nor an officiator of the Patil Watan of Mundwa that he had not also proved by means of a certificate of heirship by a competent court that he is the legal and proper heir to deceased Hanumanta that the land is question had reverted to Watan family being held by Rakhmabai Gaekwad and therefore refused the request of the appellant. An appeal being preferred to the Collector, Poona, he upheld the order of the Prant Officer and rejected the appeal. Against this order appellant preferred the present appeal. During the correspondence it is found that the deceased Hanumant Khandu who alienated the land had left behind him a daughter named Krishnabai who is now married. The Collector says that her case need not be considered as she has not preferred her claim. He consulted the Dist. Govt. Pleader, Poona, who is not able to give a definite opinion.

2. In the R.D. note it is pointed out that sec.11 of the Watan Act is mandatory and it requires a Collector necessarily to take action into such cases. R.D. has therefore

raised the question whether the Collector was justified in not taking any action, under sec.11 which is a mandatory provision, in favour of Krishnabai who has not put in her claim. R.L.A. is requested to give his opinion in the matter and advise as to the further action Govt. should take in the present appeal.

R.D.P.
28/7/56.

S.C.

Legal Depa rtment.

Hereditary Offices Act, 1874.

It is true that section 11 of the Bombay Hereditary Offices Act,1874, is mandatory but it is apparent from section 11A that the property resumed or otherwise dealt with under section 11 must go to benefit x one or the other of the Watandars (see Phadnis's Watan Act p.89). If it be not possible for the Collector to determine as to who is the proper heir to the deceased Watandar or if the proper heir does not apply to the Collector for restoration of the land, the question of taking action under section 11 for declaring the alienation null and void would not arise. In the present case the applicant is not proved to be the proper heir of the deceased Hanumanta Khandu Gaekwad, Krishnabai the daughter of thedeceased Hanumant Khandu Gaekwad has not x applied forrestoration of the land. The refusal of the Collector to take action under sections 11 and 11A would not prejudice the right of the proper heir to seek remedy in a Civil Court against the alienee in respect of the alienation (see Dattatraya vs. Tukaram, 23 B.L.R. 376). In the circumstances the view taken by the Collector is xxxxx correct.

Id/- (P.H.L.)

Additional Secretary to Government.

U.R. to R.D. No. 14037,dated the 15th September 1951.

R.D.P.
28/7/53

S.C.

Office of the R.L.A.

It appears that Shri V.V.Rajadhyax, Watandar Kulkarni of Salgaon, was appointed by the Kamavisdar, Kudal, to work as purchase officer for purchasing paddy in the villages of Salgaon, Kauoli, Nivaje and Tulsuli in Kudal Peta. He was subsequently put in charge of seasonal purchase godown at Salgaon. He purchased more than two thousand Bengal maunds of paddy and sent them to various centres in bags. The bags received from Kangaon centre were found to be mixed with sand and kunkar and an enquiry was held, as a result of which Shri Rajadhyax was suspended from duty by the Prant Officer. The Additional Administrator, Sawantwadi who held the enquiry submitted his report to the District Magistrate recommending departmental action under section 58 of the Bombay Hereditary Offices Act, 1874 (Bom.III of 1874). The question raised for the R.L.A's consideration are (1) whether the duty of purchasing feed-grains can be said to form part of the legitimate duties attached to the hereditary office of a Watandar Kulkarni and whether Shri Rajadhyax can be held to be guilty of misconduct within the meaning of section 57 of the Bombay Hereditary Offices Act as applied to the Sawantwadi State; and (2) whether there is any statutory limit in section 57 of the Bombay Hereditary Offices Act for the suspension of Shri Rajadhyax pending enquiry into his conduct.

2. Under section 57 of the Bombay Hereditary Offices Act as applied to the Sawantwadi State it shall be lawful for the Collector to suspend any officiater from office during ~~inquiry~~ inquiry into alleged misconduct, and to punish any such officiater, for misconduct, or neglect of duty by suspension from office for a period not exceeding six months or by fine not exceeding the fourth part of the annual emolument provided for the officiater. The first part of this section provides for suspension during enquiry into the alleged misconduct and the second part for suspension as pubishment for misconduct. or neglect of duty. So far as the suspension under the first part is concerned there is no limitation and the suspension can be for any reasonable period during the

enquiry into the alleged misconduct. The view taken by the C.S.D. on the second question is correct. So far as the question of misconduct is concerned the officiater may have been guilty of such misconduct in the course of the discharge of his duties. Section 69 of the Bombay Hereditary Offices Act provides that all watandars of what ever denomination whose liability to serve have not been commuted are legally bound, subject to the provisions of this Act, to render such service as has been customary or as is required by law. The nature of 'customary service' is specified at page 3 of Part I of Phadnis' Watan Act. Section 17 of the Bombay Land Revenue Code specifies the duties which are imposed by law. That section provides: "subject to the general orders of the Provincial Government and of the Commissioner, the Collector shall prescribe from time to time what registers, accounts and other records shall be kept by the village accountant. It shall also be the duty of the village accountant to prepare wherever called upon by the Patil of the village or by any superior revenue or police officer of the taluka or District to do so, all writings connected with the concerns of the village which are required for the use of the Central or the Provincial Government or the public such as notices, reports of inquests and depositions and examinations in criminal matters." It is presumed that the Sawantwadi State had applied the Bombay Land Revenue Code to Sawantwadi State. If so, the duties of the Village Accountant would be those prescribed by section 17. The customary service as well as the duties imposed by law do not appear to extend to calling upon a Village Accountant to work as Barcelee Officer. Apparently, the conduct alleged against Shri Rajadhyax is committed by him in the course of the discharge of his duties. These duties did not appertain to the office of Kulkarni. Consequently, it appears that Shri Rajadhyax cannot be held to be guilty of misconduct under section 37 of the Bombay Hereditary Office

Bombay Hereditary Offices Act. The contention raised by Shri Rajadhyax appears to be valid.

Id/- (J.H.D.) 12/9

Remembrancer of Legal Affairs.

U.R. to C.S.D.No. 14603, dated the 14th September 1951.

S.D.P.
23/7/52

S.C.

16483 dated 7-8-51.

Submitted with ref. to Secy. R.D.'s note at p. 133 ante. This is in connection with petition dated 27-2-51 made by Shri Raygunda Sakhagavde Patil (pp.49-63 ante) praying for a review of the orders communicated in Govt. letter dated 5-1-51 (p.41 ante). The claim made is about the succession to the Inam lands in the village of Gijavane. The facts leading to the reference are as follows:-

One Raygavda Sakhagavde Patil who held Inam and rayatwari lands in the village died on 31-8-1903. Two days before his death he had applied to the Maharaja of Kolhapur for permission to adopt one Ramgonda whom he actually adopted the next day. As the adoption was not sanctioned by the Maharaja, the Prant Officer, S.D., in 1907 entered the name of Raygonda's brother, Vigonda as the successor to the Inam. Thereupon Ramgonda the adopted son of Raigonda appealed to the Sarsubha; but his appeal was dismissed on 18th Jan.1920. A review application that the succession should be stayed till the Civil proceedings pertaining to the Rayatwari lands (of Raigonda) which were then pending was disposed of. The stay order was confirmed by His Highness on 24th Oct.1928. When the Civil Court upheld the adoption of Ramgonda (for the purpose of succession to rayatwari lands) he again petitioned to the Maharaja of Kolhapur that he may be recognized as the next watandar (pp.177-178 of file I). On this the Maharaja passed an order (No.491 dated 10-3-33) at pp.178-179 ibid) in which he in very clear terms refused to accord sanction to the adoption of Ramgonda and ordered that the matter should be filed. A review application against that order dated 10-3-33 was rejected by the Rev. Minister on 26th Sept. 45. Ramgonda then made a revision petition to the Regency Council which was rejected. He then approached

the Resident who, quelling injustice, accepted his appeal (vide the Secretary to the Resident's letter dated 10-2-1947 at pv19 of File XII). The Regency Council then passed a resolution on 21-2-1947 declaring Rangenda as the successor to the gata held by Yalgonda. 2. The present applicant (i.e. Yalgonda) then appealed to the Maharaja for cancellation of that resolution, but his prayer was not granted. A review application was then presented by him to the Maharaja but before its disposal the State merged. The review application was rejected by the Collector of Kolapur. The Collector's decision was upheld by the Comm. S.D. on 10-5-50. The applicant Rayagonda Jakhagonda Patil then approached the Govt. of Bombay praying for the restoration of the Maharaja's order No.691 dt. 10th March, 1933. That application was rejected by Govt. on 5th Jan., 51 (p.41 ante). But he has now filed a review application which is at present under consideration (pp.65-67 ante). In this application Rayagonda has placed reliance upon the recent decision of the Bombay High Court in Second Appeal No.16 of 1949 in which the High Court has interpreted Vat Hukum No.21 of 1858 which requires the sanction of Govt. for adoption. The A.L.A. is requested to advise in the matter.

R.D.P.
22/7/55.

S.C.

Office of the H.L.A.

Considering the long history of the litigation between the parties and the final order of the Resident, Kolhapur, recognising the adoption of the opponent even in respect of Watan property, against which four review applications have been already rejected, it would appear desirable not to reopen the matter, particularly when in the pending civil suit filed by the opponent for possession of the Watan lands the question about the validity or otherwise of his adoption for want of sanction of the Kolhapur Government being in issue, the applicability or otherwise of the Bombay High Court decision in Special Appeal No.18 of 1948 to the facts of the present case would be duly considered. If ultimately, the applicant succeeds in the Civil Suit, he will have to be recognised as successor to Watan property, otherwise the opponent's recognition to the Watan property under the Resident's order will have to be continued. In these circumstances pending the decision of the Civil Court no action appears desirable and the Resident's Order may be allowed to stand.

Id/- (J.R.D.) 10/10

Remembrancer of Legal Affairs.

N.F. to P.D. No. 16077, dated the 10th October 1951.

P.D.P.
18/7/16

S.C.

Office of the R.L.A.

If parties are still to be heard it is no use in arriving at a decision at this stage. After the parties are heard, the papers may be sent to the Remembrancer of Legal Affairs for consideration.

Id/- (J.R.D.) 3/8

Remembrancer of Legal Affairs.

L.h. to S.D.,No.12506, dated the 4th August 1951.

R.D.P.
22/7/05

S.C.

Office of the R.L.A.

In view of the facts disclosed in the Report of the Collector, it would be safer to maintain the status quo.

2. So far as the right to the office of revenue patil of the village of Lat is concerned, the question is concluded by the decision of the Resident, Kolhapur, confirmed by His Excellency the Governor in Council in 1944. Consequently, the contention of the opponent Shetgonda Rangonda Patil, who claims to have a half share in the service of the revenue patil of that village will have to be rejected. But so far as the appellant Balgonda's claim to the office of Police Patil of that village is concerned, it appears that his contention is not also well grounded even on merits. The Resident at Kolhapur in his order dated 26th January 1933 appears to have held that the right to the office of revenue patil vests in the family of the appellant Balgonda and the right to the office of the police patil in the family of the opponent Shetgonda since time immemorial, and admittedly since 1884 the family of the respondent Shetgonda has been officiating as mulki patil of that village. The appellant Balgonda's contentions seem to be based on the vat hukums Nos.28/8 of 1914 and 19 of 1920. The former, as stated by H.D., has little or no application to the present case. The latter no doubt lays down the principle that there should be only one revenue and police patil for each village in the Kolhapur State. But according to the preamble of that vat hukum it appears that the object in view, namely, the recognition of only one mulki and police patil for each village should as far as possible be carried out. The words "होता तोवित" in the opening sentence of this vat hukum appear to be significant. It follows, therefore, that this order is not to be rigidly enforced but in proper cases an exception can be made if equity and justice demand. Further it is stated in this vat hukum that the offices of police patil were created after the summary settlement & for the convenience .....

of service and consequently holders of such office are not watandars at all and the lands held by them are not watan lands and the cash allowance is allowed to them according to a scale, and consequently half of that allowance should be given to the officiator and the rest must be considered as saying to Government. Reading this order as a whole, it appears that the intention was to apply this order to such of the revenue or police patil offices as were created after the summary settlement was applied to the State and were paid scale remuneration. The decision of the Resident, Kolhapur, in 1943 clearly proves that the right to the office of police patil vests in the family of the opponent Bhatgonda since a very long time. Obviously, therefore, this office was not created subsequent to the application of the summary settlement to the Kolhapur State. The Collector has reported that the Police Patil is enjoying watan lands as remuneration for service. Besides, the Kolhapur High Court in the First Appeal No.14 of 1946 between the same parties has held that the Bombay Hereditary Offices Act was deemed to be applied to the Kolhapur State. According to the provision contained in Part VI of that Act, the custom of the watan as to service has to be given effect to. As stated above, the right to the office of Police Patil of the village Lat vests in the respondent Bhatgonda's family since over a century. In these circumstances, it appears that the view taken by the Collector and endorsed by the Commissioner appears to be correct and the right of the respondent Bhatgonda to the office of the police patil of the village should be recognised.

Sd/- (J.R.D.) 10/10

Remembrancer of Legal Affairs.

L.R. to R.D.No. 16159, dated the 11th October 1951.

R.D.P. 30/7/30

S.C.

Legal Department.

R.I.No. 17200 dt. 28-8-1951.

Submitted with reference to R.D. note at pp.63-64 ante. The question discussed in this file is about the succession to the two shares in the Deshpande Watan at Kolhapur, District Kolhapur (formerly of the Vishalgadh Jahagir in the Kolhapur State) which was held by one Vasudeo Ballal Deshpande and Jamnabai wife of Hari Deshpande. Vasudeo Ballal Deshpande died hairless in 1900. After his death a heirship enquiry was started and although it in 1944 by his order No. 322 dt. 23-6-1944, the Prime Minister of Kolhapur directed that out of the two claimants Shri Shanker Narayan Deshpande and Sitaram Jivaji Deshpande, the former should be recognised as the successor of the deceased Vasudeo Ballal. Shanker Narayan's claim was recognised on the ground that he was the next heir of the deceased inamdar according to the Hindu Law The plea put forth by Sitaram Jivaji was that he was the eldest male descendant in the eldest branch of the family; and on the strength of Hat Hukum No.27 of 1914 which recognised the rule of lineal primogeniture, he was entitle to the share. The Prime Minister's Order however discloses that there was no evidence to show that Hat Hukum No.14 of 1827 had been applied to Kadim Inams in Jahagirs; nor was any custom to that effect established in the Jahagir village. Thereupon Sitaram Jivaji preferred a revision application to the Regency Council on 24th September 1948. He based his claim on Notification No.16, dt.17-8-1948 issued by the Kolhapur Government declaring the laws, rules, hukums etc. in force in Jahagirs villages. His application was rejected by the Regency Council on the ground that Notification No.16, dt. 17-8-1948 had no retrospective effect. An appeal was then preferred to the Resident, but it appears, it was left undecided. The matter was then taken up by the then Prime Minister of Kolhapur (the late Shri A. B. Latthe) who in his detailed report dt. 13-9-1948 to the Maharaja pointed

out that the Darbar Vat Hukum applied to the Jahagirs from the respective dates of their promulgation, though the Jahagirdars had been disputing this; and that as a result the claim of Sitaram Jivaji who was the eldest male member in the eldest branch of the family to succeed to the share in the watan should be recognised. The recommendation made by the Prime Minister was accepted by the Maharaja (under his Order No.106 dt. 24-2-1949.

2. The case of Janakibai wife of Hari Deshpande who died without leaving a male heir was also on all fours with that of Vasudeo Ballal; and the same recommendation as in the case of the latter was made by the Prime Minister of Kolhapur in his report dt.13-8-1948 and accepted by the Maharaja.

3. It appears that the Maharaja's order No.106 dated 24-2-1949 has not yet been given effect to. Sitaram Jivaji, the eldest claimant concerned has therefore petitioned to Government. For the reasons mentioned in para 2 of his letter dt. 10-10-1949 (pp.5-6-note) the Collector of Kolhapur considers that the claim under of the Maharaja should be set aside. The A.G.A. Kolhapur who was consulted by the Collector has also expressed the view that in the absence of any enactment applying the rules, wat hukums etc. to Jahagir lands with retrospective effect the Kolhapur Government Notification No.16, dated 17-8-1948 cannot be considered to have retrospective effect. In these circumstances the R.D. desires the opinion of the H.L.A. on the interpretation of the Kolhapur Government Notification No.16 dated 17-8-1948.

R.D.P.
30/7/50

S.G.

OFFICE OF THE R.L.A.

The opening part of the Kolhapur Government Notification No.16, dated 18th August 1948, refers to the control of the Darbar over all Kadim Inams in the Jahagirs, though some powers such as making an heirship enquiry, attachment etc. have been delegated to the Jahagirdars. The second para. declares that though according to Colonel Parr's Circular of 1821 all laws, Vathukums, circulars, orders etc. pertaining to inams in force in the Kolhapur Darbar automatically apply to the Kadim Inams in Jahagirs, different practices prevail in different Jahagirs, and therefore in order to declare the correct position of law and to remove all doubts in the matter the Notification concludes that all existing and future laws, vathukums, circulars, orders etc. are automatically and equally applicable to Kadim Inams in villages. A plain reading of this Notification shows that it was issued not so much for applying any particular laws or Vathukums to Kadim Inams as for declaring that laws, vathukums etc. were in force in Jahagir villages and applicable to Kadim Inams. The Notification simply declared the correct position of law applicable to Kadim Inams in Jahagir villages and consequently the general principle that a declaratory statute is retrospective will apply. The view expressed by the District Government Pleader, Kolhapur, the Collector of Kolhapur and in the order of the Prime Minister dated 23rd June 1944 is not correct. There does not therefore appear any objection to giving effect to the Maharaja's order No.106, dated 24th February 1949, which was based on late Shri Latke's report dated 15th September 1948.

Sd/- (J.R.D.) 18/10

Conveyancer & Legal Affairs.

U.O. to R.D.No. 10530, dated the 18th October 1951.

R.D.P.
50/7/51

L.C.

L.D.C.I. No. 17558 dt. 24th Aug.61

Submitted.

S.No. 26/1 of Kiche in Mulshi Taluka forms part of Patilki Vatan land but is not assigned for the remuneration of the officiator. It appears to have been alienated by the two watandars, Shri A.N.Shinde and Shri M.G.Shinde to one Shri V.H.Chambhar about some 45 years back and at present it is held by his daughters. As the land was found to be in possession of non-watandars resumption proceedings were started. The Assistant Collr., however, found that one of the alienors viz. Shri Madhavrao Shinde is still living though the other is dead, and in the circumstances he held that no action can be taken under sec.3 of the Vatan Act. The Collr. of Poona does not agree with this view and he considers that the alienation cannot remain valid after one of the joint alienors is dead. He has accordingly submitted the case for Govt. orders on the point. The R.D. considers that on the death of the alienor his share in the property can be resumed under sec.11 of the Act and that the alienation would be valid as far as the other alienor who is living is concerned. The L.L.A. is requested to advise whether this view is correct.

Id/-- 20/9.

Asst. Secy.

Dy/ 2/ 10

L.D.

Legal Department.

Joint Alienation.

Bombay Hereditary Offices Act, 1874. Sec. 5.

The view taken by the Revenue Department is not correct. Where an alienation is made by two or more watandars jointly then the alienation is held to be valid under section 5 of the Bombay Hereditary Offices Act, 1874, until the death of the last survivor of the joint alienors (see Narasinha vs. Vaman, 11 Bom.L.R.1102 and Phadnis's Watan Act, pp. 35-36). In the circumstances the land cannot be resumed till Shri Wadhavrao is dead.

Sd/-

Additional Secretary to Government.

U.O. to R.D.No.15656, dated the 3rd October 1951.

R.D.P.
30/7/56

S.C.

Legal Department.
21102
11-10-51.

Submitted with reference to Secy. R.D.'s note at pp. 93-94 ante. Attention is invited to R.L.A's opinion No. 1238, dated 10-1-1951 which was received on the petition of appeal made by Shrimati Bhimbai Venkatrao Desai against the order made by the Dewan and Collector of Jamkhandi on 2-12-1944. The facts of the case will be found in para 1 of that opinion. The R.L.A. had advised that the order of the Dewan of Jamkhandi was not correct and should be set aside. That opinion was accepted. The present file deals with the petition of appeal made by Shri Govindrao Bhimaji Desai. In an interview granted by Secy. R.D. to the pleaders engaged on behalf of both the parties, the following decisions were referred to :

(1) Anant vs. Shankar, 46 Bom. L.R. 1.

(2) Bhuvaneshwari vs. Bikrawal (1885) L.R.12 I.A.137.

(3) 32 Bom. L. R. 166.

(4) 35 Bom. L. R. 609.

Secretary to R.D. considers that the decision already taken by Government should be maintained and that if as stated on behalf of Govindrao the Bombay High Court has given leave to appeal to the Supreme Court in a case involving a similar point viz. whether an adopted son can divest collateral of property inherited by him or her for lack of a male member in the family and if the law is ultimately interpreted differently by the Supreme Court, it would be open to the parties to apply for a review. The papers are also to be returned before submission to H.E.,R.D.

Id/- 5/11

R. L. A.

R.D.P. 30/7/56

S.C.

Office of the R. L. A.

Seen and returned.

The view expressed by the Secretary, Revenue Department, is correct.

Id/- (J.R.D.) 5/11

Remembrancer of Legal Affairs.

D.O. to T.D.De. 17495, dated the 8th November 1951.

T.D.D.
20/7/08

L.C.

Legal Department.

S.R.No.22361 dt. 27-10-51.

Submitted.

2. It appears that on 3-4-1951 the Mamlatdar of Bagalkot inflicted a fine of Rs.2/- under section 84 of the Bombay Hereditary Offices Act, on Shri S.R. Desai, the officiating Kulkarni of Niralkeri, in the Bagalkot Taluka for absenting from the same without permission. Against this order of fine the Kulkarni made an appeal to the Collector on 28-4-1951, but his appeal was rejected on the ground that the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950, having come into force the Collector had no power to entertain the appeal. The S.R.D. is requested to advise whether the view taken by the Collector is correct.

Id/- 6/11

R. L. A.

Before
30/11/51

L.D.

Office of the R. L. A.

The Bombay Hereditary Offices Act, 1874, having been repealed the Collector can decide the appeal under section 203 of the Bombay Land Revenue Code.

Id/- (J.R.D.) 9/11
Memorandum of Legal Affairs.

U.R. to R.C., No.17878, dated the 12th November 1951

K.L.P.
30/7/56
R.C.

Office of the R.L.A.

Auction sale of S.No.100 of Koppangendankop.

Survey No.100 of Koppangendankop was originally a paragana watan land of Inam class V. It was resumed along with some other paragana watan lands for non-payment of -ahwal judi by the Inamdar under Government Resolution, Revenue Department, No.6732/33 dated the 24th May 1937, but was subsequently regranted to the original holder subject to the conditions mentioned in the sanad appended to Government Resolution, Revenue Department No.6732/33 dated the 20th February 1940. The Watandar, who was liable to pay the petgi dues of the Patil and Kulkarni of the village, fell in arrears and an assistance suit was filed against him for recovery of the dues. In execution of the decree passed by the Mamlatdar, the survey number was sold by public auction and was purchased by one Shri Basappa Hanmappa Deodanaver for a sum of Rs.400/- who was subsequently put in possession of the lands on 13th September 1943. The petgi dues were paid out of the sale proceeds and the balance of Rs.203-7-0 realized in excess was paid to the Watandar. On 17th November 1945, the Watandar died and his son filed a suit against the auction purchaser for recovery of the lands. The suit (No.69 of 1945) was decided in favour of the plaintiff and this decision was upheld by both the District Court and the High Court. The auction-purchaser, Shri B. M. Deodanaver has now made an application to Government for restoration of the lands but Government considers that his request cannot be granted. The papers are, however, however referred to R. L. A. for advice on the following points:-

(1) Whether the applicant is entitled to refund of Rs. 400/- paid by him in the auction sale for the land.

(2) If so, whether Government will be competent to recover from Shri Shivrao, the present holder, the balance amount of Rs. 203-7-0

paid to his father from the auction sale proceeds and the amounts of Rs. 166-1-0 and Rs. 126-0-3 paid to the Patil and Kulkarni as their Potgi dues; and

(3) Whether in view of the High Court Judgment, Government Resolution, Revenue Department No. 6792/33 dated the 16th June 1942 should be cancelled.

2. In his opinion No.b775 of the 6th May 1942, the R.L.A. had considered the nature of the grant and he had taken the view that the Inam created by the Sanad was of a new kind and that the lands were transferable. This opinion of the R.L.A. was accepted by Government and communicated to all the officers concerned in Government Resolution, Revenue Department, No. 6792/33 dated the 16th June 1942. The Civil Court as well as the District Court and the High Court have, however, taken a different view about the nature of the Inam. They have unanimously held that the lands granted were to continue as Watan lands with all the attributes of Paragana Watan and, therefore, they were inalienable beyond the life time of the original Watandar. The interpretation put on the Sanad by the High Court will have to be respected though Government was not a party to the decision and consequently Government would have to cancel Government Resolution, Revenue Department, No.6792/33, dated the 16th June 1942.

3. As regards the other two questions, it appears that the auction purchaser will not be legally entitled to refund of his money, nor would it be possible to ask the Watandar, Shri Thivrao, to repay the balance and the Potgi dues. The land was sold in satisfaction of a decree passed in an assistance suit and the right, title and interest of the Watandar therein was sold. It is true that when the sale was held it was considered that the Watandar had a transferable interest in the lands and that the alienation would hold good even beyond his life time. However, at an auction sale

under a decree of the Court, there is no warranty of title and the position of sales under the Bombay Land Revenue Code is not different (vide Gupte's Land Revenue Code, pp. 312-313). Hence, what passes to a purchaser at a Court-sale is the "right, title and interest" of the judgment debtor, whatever that interest may be. In other words, a purchaser at a court-sale buys the property with all risks and all defects in the judgment debtor's title except where it is found that the judgment debtor had no saleable interest at all. In the latter case, the purchaser may apply to have the sale set aside. But,and this is an important consequence of the purchaser buying only the right, title and interest of the judgment debtor - the sale will not be set aside, if the judgment - debtor has even a partial interest in the property, nor will the purchaser be entitled to a refund of the purchase money to the extent to which the judgment debtor had no interest, unless the case be one of fraud. (Vide Mullas' Civil Procedure Code, 11th Edition, p. 806). In the present case there was no fraud and the judgment debtor did possess a saleable interest in the land though it was limited to his life-time. In the circumstances, the purchaser will not be entitled to refund of his purchase money nor would it be legally competent to recover that amount from the Watandar Shri Jnirane.

Id/- (J.R.D.) 23/9

Remembrancer of Legal Affairs.

U.T. to L.D.No. 10560, dated the 28th September 1951.

R.D.P.
30/7/51

S.C.

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Id/- (J.R.D.) 23/9

Remembrancer of Legal Affairs.

U.T. to L.D.O. 10560, dated the 28th September 1961.

R.D.P.
30/7/61

S.C.

RIG15
16-10-51.

Submitted.

2. The facts of the case are narrated in the letter of the Collector of Belgaum dated the 21st August 1951. Briefly they are as follows:

S. No.473/1 and 473/4 of Bergaon Village, Taluka Chikodi were paragaon watan lands and Shri Mahadaji Krishna Naik and Nanda Appa Naik are the watandars. Shri Bhava Pala Bankapure and two others claim permanent tenancy in respect of these lands. Since 1934 the rent payable by these tenant was Rs.119/8/- which was fixed by the P.O. to the Collector of Belgaum by his order No.JH. dated the 13th March 1934, under section 9(2) of the Bom. Hereditary Offices Act. In 1949 the Watandars approached the Prant Officer, Belgaum for revision of the rent and after due inquiry the P.O. enhanced the rent and fixed it at Rs.838/- at Rs.20 per acre under the said section 9(2) read with sections 13 and 15 of the Bombay Tenancy Act, 1939. (vide his order No.J-38 dated 4th March 1949). For this enhancement it appears the P.O. took into consideration the rent fixed by the Mamlatdar of Chikodi in Tenancy case No.237 of 1948 in respect of S.No.472/1 of Bergaon, a land in the neighbourhood of the said lands. Against this order the tenants made an appeal to the Collector but it was rejected. Thereafter they approached Govt., but their request for reduction of the rent was rejected by Govt. on the ground that Govt. had no jurisdiction in the matter (vide G.L.R.D.No.XD/16345-F, dated the 25th March 1951). The tenants have again approached Govt. on the ground that the proceedings in Tenancy Case No.86/1947 on which the P.O. relied for fixation of rent have been set aside by the Civil Judge, Sr. Division, Belgaum and that the case has been remanded for rehearing. It further appears from the joint letter of the Watandar and the tenants dated the 17th Sept. 1951 that they have compromised the matter in dispute and amicably settled the rent at Rs.35/- per acre and have requested Govt. to revise the order of the P.O.

of the P. C. accordingly. The R.D. considers that the P.C.'s under section 6(2) of the Hereditary Offices Act is final and it is not possible for Govt. to interfere with it and revise the same even on the basis of the Compromise.

Sd/- (J.R.D.) 20/11

M. L. A.

R.D.P.
20/7/20

S.C.

Office of the D.L.A.

Bombay Hereditary Offices Act, 1874; Section 9(2)

Revision of Order under -

The profits of the Parangan Watan lands by way of rent were fixed by the Prant Officer in the present case under section 9(2) of the Bombay Hereditary Offices Act, 1874. That Act being now repealed in respect of the Parangana and Kulkarni Watans, it would not be competent for any authority to revise or modify the Prant Officer's Order. There would, however, be no objection to the parties executing a deed between them giving effect to the compromise in supersession of the Prant Officer's Order.

Sd/- (J.R.D.) 29/11

Commissioner of Legal Affairs.

Note to D.J. Mehta, dated the 21st November 1951.

D.J.M.
29/11/51

M.S.

L.D.B.I-No.16462.dt.18.9.51

Submitted.

Please see S.L.A. opinion No.610 dt. the 16th January 1949 at pp.17-23 ante. After an exhaustive consideration of the facts of the case, the S.L.A. held therein that the first order passed by the Raja Saheb of Mudhol was wrong and that the applicant, Shri K.D.Patil, was entitled to the possession of the lands. Govt. accepted this opinion and under G.L.,R.D No.8743/45-M dated the 11th Feb.1949, directed that Shri Patil's name should be entered in the Register of the Patilki lands. Subsequently, it was also directed that the lease amount of Rs.10,217-12-3 in respect of the lands which x was credited in the Mudhol treasury should also be refunded to Shri K.D.Patil. It has now been brought to the notice of Govt. that the opponents of Shri K.D.Patil, Messrs. M.T. and Y.T.Patil, have obtained a judgment of the Civil Court in their favour from the Civil Judge, Jr. Dn., Bijapur in special suit No.93 of 1949. A copy of the judgment is not forwarded to S.L.A. but a copy of the decree is at pp.47-55 ante. The Civil Judge, Bijapur, has held therein that the plaintiffs are the rightful owners of the property mentioned in the two schedules and that they are the rightful claimants of the amount in the Mudhol treasury in respect of the property. The Civil Judge has also granted a permanent injection against Shri K.D.Patil restraining him from receiving any part of the amount lying in the Mudhol treasury in respect of the property declared to be of the ownership of the plaintiffs. The R.D. has now referred the papers to S.L.A. for advice whether the amount lying in the treasury should be paid to the opponents in accordance with the decree and whether the lands should be restored to them. The Under Secy., R.D. considers that action of the lines of the Civil Court's decree will have to be taken and that it is for Shri K.D.Patil to prefer an appeal to the higher authorities. The S.L.A. is requested to advise (p.46 ante).

The R.L.A. is requested to advise (p. 46 ante).

Id/- 25/10

Addl. Secy.

R.D.P.
30/7/56.

S.C.

LEGAL DEPARTMENT.

Watan property in Mudhol State.

The decree of the Civil Court will have to be accepted and the amount will have to be paid to the plaintiffs. But as a matter of precaution perhaps Shri M.B.Patil may be given an opportunity to bring a stay order or injunction against the Government from the Appellate Court, within a certain period of time. If he fails to bring such an order the amount may be handed over to the persons declared by the Trial Court to be entitled to the same.

Id/- (P.M.L.)

Additional Secretary to Government.

W.S.C. J.D.No.15164, dated the 10th November 1951.

C.D.P.
30/7/52

S.C.

Office of the R.L.A.

Watan Lands in Mudhol State - succession.

R.L.A's opinion No. 810 dated 18-1-1949.

It appears that Survey Nos.105 and 247 of Patilki watan lands of Hebbal in Mudhol State (which is now merged in Bombay State) were held by one Shri Krishtappa Hanamappa Birddar Patil who died in 1922 leaving behind him his only daughter and no male heir. In the course of the heirship inquiry, the Mudhol State authorities attached the lands in 1923 on the ground that they were in possession of a non-watandar and they remained under attachment till 1939 when they were restored temporarily to Shri Irappa Hanamappa Arakeri, the grand-son of the original holder. Subsequently in 1942 the lands were permanently restored to him under the Rajasaheb's order dated 3-3-1948 just before the merger of the State. He applied to the Collector for paying to him the mesne profits for the period of attachment. The mesne profits which have accumulated amount to Rs.2,734 and have been credited to the deposit account in the treasury. The Collector rejected the claim of the applicant on the ground that during the period before the merger of the State he made no claim for refund of the amount and that the Rajasaheb should have forfeited the inam for want of heirs. He has appealed against that order and pending this appeal the question was considered whether in view of R.L.A's opinion in Chitrabhanket case; the applicant who claims succession to the watan lands through his mother could be recognised. R.D. considers that, since the Bombay Hereditary Offices Act,1874, as amended up to 1910 was made applicable to Mudhol State in 1914, in the absence of any male heirs, the applicant being the son of the daughter of the last male holder could be recognised as heir and the mesne profits should be paid to him. Under Secretary, Revenue Department, considers that there is no reason to set aside the order of the Rajasaheb which was passed on 3-3-48 since it is consistent with the rules laid down in the Watan Act which were made

applicable to the ex-Mudhol State in 1914 and in that case the claim to mesne profits from 1924 to 1939 will have to be admitted. R.L.A. is requested to advise.

The Chikrabhanket case, which was considered by the R.L.A. in his opinion No.610 dated the 15th January 1949, is clearly distinguishable. In that case succession opened long before the Bombay Hereditary Offices Act, 1874, was applied to the Mudhol State and Regulation II of ~~1938~~ 1942 had not been applied to the State. In the present case succession, it appears, opened some time in 1928 when the last male holder died. Consequently, section 2 of Act V of 1880, which was applied to the Mudhol State in 1914, would govern the present case. Under that provision female heirs are to be postponed in preference to the male heirs. In the present case there are no male heirs at all. Consequently, the daughter of the last male holder, Krishtappa Hanmappa, could be recognised as successor to the watan lands. The applicant being her son could succeed to the watan lands. Consequently, the Rajasaheb's order dated 3-3-48 recognising him as the heir is valid. The mesne profits which have accumulated during the period of attachment of the lands from 1923 to 1939 have been credited to the deposit account in the treasury. The amount would be treated as being held on behalf of the rightful heir of Shri Krishtappa Hanmappa. The applicant would, therefore, be entitled to the mesne profits. The view taken by the R.D. is, therefore, correct.

It appears from the Rajasaheb's order dated 3-3-48 that in the present case succession to the watan lands opened long before 1883 and the then Rajasaheb of Mudhol had accorded a sanction to the name of Krishnappa, son of Malava, the daughter of the deceased holder, being entered in place of the deceased holder. It is stated in that order that the heirship enquiry rules of 1878, which were in force, did not preclude females or persons claiming through females as heirs. These rules are not available. Even then it appears that there is no reason to disturb that order of the Rajasaheb for

there is no other person belonging to the watan family who has been claiming the lands in preference to the female heir. If the State could claim forfeiture of the land on the ground that there was no male heir, it could have certainly done it and not recognised the female heir. Besides, that order has stood for over 60 years unchallenged by anybody. The Bombay Hereditary Offices Act does not provide for lapse in case the watan develves upon a new watandar family through inheritance to a female (see G.R. No.1266 of 1906; Rahim Vs. Futu P.J. 1825,371; Phadnis's Watan Act p.213). The present applicant claims through his mother and when the mother's succession to the watan lands was recognised by the Rajasaheb so far back as 1838, there is no reason why his succession to the watan lands should not be recognised. In the circumstances even assuming that the succession opened long before 1838, there appears now reason to disturb the order of the Rajasaheb passed in 1948. Consequently, in my case, the applicant's claim to the land cannot be disputed and his right to the mesne profits accumulated during the period of attachment may be admitted.

Id/- (J.R.D.) 3/12.

Remembrancer of Legal Affairs.

U.O. to R.D.No. 19381, dated the 3rd December 1951.

R.D.P.
3v/11/50.

S.C.

24813 dt. 30.11.51.

Submitted with ref. to R.D.note at p.41 ante.

Attention is invited to R.L.A.'s opinion No.10085, dated 16th November 1951, in which the R.L.A. had expressed the view that as the property in question had been recorded in Govt. records as 'Govt. land' and not as 'Watan land it was not advisable to issue a certificate under sect.10 of the Bombay Hereditary Offices Act,1874. On the request of the applicant Shri V.M.Virdeshwarkh the L.D. informed him of the reasons of Govt.'s decision of refusing to issue a certificate viz. that the property had passed into the hands of non-watandars sixty or seventy years ago in execution of a decree and that no effective steps had been taken to get the alienation set aside. Shri Virdeshwarkh has again made a representation to Govt. praying for the issue of a certificate urging that the lands passed into the hands of the auction purchaser only 50 yrs. ago, that he was a minor that time and that he had made a petition to the Ruler of Akalkot in 1922 etc. In these circumstances the R.L.A. is requested to advise whether in view of the fact that the applicant had made an application to the Akalkot Darbar in 1922 there is any ground to reconsider the view taken before.

Is/- 14/12

S. L. A.

R.D.P.
30/7/56

S.C.

Office of the [illegible] A.

It is true that the Remembrancer of Legal Affairs had observed in his opinion No.13005 dated 10th November 1950 that the property in question appeared to have passed into the possession of a non-entamdar 60 or 70 years ago in execution of a decree of a civil court, and the plaintiff and Collector was urge that it was not before 60 or 70 year but before 80 years ago. But the real ground why the Remembrancer of Legal Affairs expressed his view against the issue of a certificate was that the requirement of section 10 of the Watan Act had not been fulfilled inasmuch as the lands in question had not been recorded in Revenue records as watan lands; but actually they have been shown as Government lands in the Shetwar Patraks for the years 1871 and 1936-37. (vide para 7 of the Collector's report dated 6th August 1950). The fact that Shri Sardesh mukh had made a petition to the Nazlket Darbar in 1921 was before the Remembrancer of Legal Affairs when he last expressed his opinion. In his present report too the Collector has not attempted to throw any light as to how the lands came to be shown as Government lands. In those circumstances there does not appear any reason for reconsidering the previous opinion.

Id/- (J.E.D.) 15/12

Remembrancer of Legal Affairs.

[illegible] to [illegible] No. 21053, dated the 17th December 1951.

Remarks
30/7/52

L.C.

L.D.R.I.No. 25076 dt. 5-12-51.

Submitted.

Please see R.L.A's ~~xxx~~ opinion No.18286, dated the 16th November 1951 at p. 83 ante. R.L.A. had advised therein that on a repeal of the Patan Act, Govt. would not be able to exercise its powers under sec. 79 and revise the ~~xxxx~~ orders passed by the Addl. Collr. R.D. now states that the said orders relates to some Patilki lands also and that provisions of sec. 79 cannot be considered as having been repealed ~~x~~ so far Patilki ~~P~~atan is~~xx~~ concerned. The P.L.A. is, therefore, again requested to advise.

Id/- (J.R.D.) 24/12

R. L. A.

L.D.P.
30/7/52

S.C.

Office of the A. L. A.

So far as Indian states are concerned, it is advised that the Act is still applicable to them and it would be open to Government to exercise its powers of revocation in respect of arms previously issued to officers in case of Patiala arms.

Sd/- (J.R.D.) 20/12.
Secretary to Legal Affairs.

Copy to Addl.Sec.P&GO,dated the 27th December 1951.

Secy.
30/7/52

Secy.